

GAU 1761

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
RESPONSE/AMENDMENT

Case Docket No. 8491

Box Non-Fee Amendment

ASSISTANT COMMISSIONER FOR PATENTS
Washington, D.C. 20231

Dear Sir:

Transmitted herewith is a REPLY for the patent application:

Inventor(s): David K. Yang, et al. Confirmation No. 3463
Serial No.: 09/821,376 Group Art Unit: 1761
Date Filed: March 29, 2001 Examiner: Curtis E. Sherrer

Title: LOW GLYCEMIC RESPONSE COMPOSITIONS

1. No additional fee is known to be required.
2. The fee has been calculated as shown below:

		(Col. 1)	(Col. 2)	(Col. 3)	OTHER THAN A SMALL ENTITY	
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA*	RATE	Fee
TOTAL	*	MINUS	**	=	x \$18 =	\$
INDEP.	*	MINUS	***	=	x \$84 =	\$
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM					+ \$280 =	\$
					TOTAL	\$

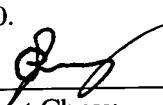
* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

** If the highest number of total claims previously paid for is less than 20, write "20" in this space.

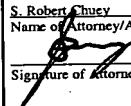
*** If the highest number of independent claims previously paid for is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment or the number of claims originally filed.

3. The Commissioner is hereby petitioned under 37 CFR §1.136(a) to grant any extension of time needed for timely response to the Office Action dated in the above-identified application to preserve pendency of said application. The processing fee under 37 CFR §1.17 has been determined as follows: \$ for a -month extension of time.
4. The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 16-2480. A duplicate copy of this sheet is attached.
 - a. Any patent application processing fees under 37 CFR §1.16.
 - b. Any patent application processing fees under 37 CFR §1.17.
5. The Commissioner is hereby authorized to make any additional copies of this sheet needed to accomplish the purposes provided for herein and to charge any fee for such copies to Deposit Account No. 16-2480.


S. Robert Chuey
Attorney for Applicants
Registration No. 39,140
Tel. No. (513) 634-0102

Date: November 21, 2002
Customer No. 27752

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231 on <u>November 21, 2002</u>		
S. Robert Chuey 	39,140 Name of Attorney/Agent	Registration No.
Signature of Attorney		

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S. Robert Chuey Name of Attorney/Agent	39,140 Registration No.
Signature of Attorney	

P&G Case 8491

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of

DAVID K. YANG, et al. : Confirmation No. 3463
 Serial No. 09/821,376 : Group Art Unit: 1761
 Filed: March 29, 2001 : Examiner: Curtis E. Sherrer
 For: LOW GLYCEMIC RESPONSE COMPOSITIONS

REPLY UNDER 37 CFR § 1.111

Assistant Commissioner for Patents
 Washington D.C. 20231

Dear Sir:

In response to the Office Action dated August 30, 2002 for the above-identified patent application, please consider the following remarks.

REMARKS

The Rejection under 35 U.S.C. § 112

Claims 1-20 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to point out and distinctly claim the subject matter regarded as the invention. Specifically, the Examiner objected to the use of the term "about" in Claim 1. To reject a Claim under 35 U.S.C. §112, second paragraph, the Examiner must establish that one of ordinary skill in the pertinent art, when reading the claims in light of the specification, would not have been able to ascertain with a reasonable degree of precision and particularity, the particular area set out and circumscribed by the claims. *Ex parte Wu*, 10 USPQ2d 2031, 2033 (BPAI 1989). This the Examiner has not done. The Examiner has not made any factual determination that establishes that one of ordinary skill in the art "would not have been able to ascertain with a reasonable degree of precision and particularity the particular area set out and circumscribed by the claims" based upon the use of the term "about" in Claim 1. The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. § 112, second paragraph. *Seattle Box Co., v. Industrial Crating & Packing, Inc.*, 731 F.2d 818 (Fed. Cir. 1984). Additionally, merely characterizing "about" as a "relative term" does not satisfy the Examiner's burden. For this reason, the rejection should be withdrawn.

Moreover, even assuming *arrguendo* that the Examiner had met the requisite factual burden, the arguments that the Examiner advances in support of the rejection are not supported by law or fact.

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